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No. 93-1472

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1993

WILBURT A. SEIGEL,

Petitioner,

v.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., CONSTITUTING THE MEMBERSHIP OF THE COMMISSIONERS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT; ROBERT E. WELCH, MANAGER, JAMES ISLAND PUBLIC SERVICE DISTRICT; EDWIN B. QUINN, WASTEWATER SUPERINTENDENT, JAMES ISLAND PUBLIC SERVICE DISTRICT; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, JUDGE; J. ALTON CANNON, JR., SHERIFF, CHARLESTON COUNTY; ROBERT MILLER, JR., UNDERSHERIFF, CHARLESTON COUNTY; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; AND P. DOUGLAS TAYLOR, WARDEN, LIEBER CORRECTIONAL INSTITUTION,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT; AND P. DOUGLAS TAYLOR

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QUESTIONS PRESENTED

The Respondents, the South Carolina Department of Corrections, Parker Evatt, and P. Douglas Taylor, Warden (collectively "SCDOC"), believe that the only questions presented, as they relate to them, are properly stated as follows:

I. Whether the lower courts were correct in holding that a state agency and its employees and/or administrators were immune from liability under 42 *U.S.C.* § 1983 for their actions in this case?

II. Whether the lower courts were correct in holding that if the Petitioner intended to state a claim for declaratory/injunctive relief, that claim was barred as a matter of law because no case or controversy existed as the allegedly offending judicial order had been abated prior to when the Petitioner instituted this action?

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The Respondents, South Carolina Department of Corrections; Parker Evatt, Commissioner, South Carolina Department of Corrections; and P. Douglas Taylor, Warden, Lieber Correctional Institution, respectfully request that the Court deny the Petition for a Writ of Certiorari of the Petitioner, Wilburt A. Seigel.

OPINIONS AND JUDGMENTS BELOW

The United States Court of Appeals for the Fourth Circuit, on November 10, 1993, affirmed the Order dismissing the Petitioner's Complaint issued by the United States District Court for the District of South Carolina, Charleston Division, on January 10, 1992.

The Opinion of the United States Court of Appeals for the Fourth Circuit is an unpublished, *per curiam* opinion, *Seigel v. James Island Public Service District, et al.*, No. 92-1204 (4th Cir. Nov. 10, 1992), and is found in Appendix A of Petitioner's Petition for Writ of Certiorari, at pages 1-A through 3-A.

The Order of the District Court is not separately published, but has been set out in Appendix B of Petitioner's Petition for Writ of Certiorari, at pages 6-A through 9-A. The District Court adopted, as its Order, the Report and Recommendation of the United States Magistrate Judge which had been rendered on August 5, 1991. That Report and Recommendation is found in Appendix C of Petitioner's Petition for Writ of Certiorari, at pages 10-A through 47-A.

The Petitioner's Petition for Rehearing was denied by the Fourth Circuit on December 16, 1993. The Order denying the Petition for Rehearing is found in Appendix A to Petitioner's Petition for Writ of Certiorari, at page 4-A.

JURISDICTION

Petitioner cites as his jurisdictional basis 28 *U.S.C.* § 1257(3). A review of that statute indicates that no such subsection exists. In addition, 28 *U.S.C.* § 1257 does not apply to this case, since the *per curiam* unpublished opinion below was rendered by a federal court of appeals, not a state court. *See, Illinois v. Gates*, 462 U.S. 213, 217-221 (1983).

Presumably, Petitioner means to rely on 28 *U.S.C.* § 1254(1) to provide his jurisdictional basis. This case, however, does not present any special or important reason warranting this Court to grant certiorari. *Sup. Ct. R.* 10. Specifically, the decision of the United States Court of Appeals for the Fourth Circuit herein does not conflict with either the decision of another United States Court of Appeals, *Waterman, S.S. Corp. v. United States*, 381 U.S. 252 (1965), or with the decisions of this Court. *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966). In addition, the decision below does not decide an important question of federal law which has not been, but should be, settled by this Court. *Glus v. Brooklyn Eastern Dist. Terminal*, 359 U.S. 231 (1959). Moreover, the decisions of the lower courts do not depart from, or sanction a departure from, the accepted and usual course of judicial proceedings. The Court

should deny the Petition for Writ of Certiorari filed by the Petitioner.

STATUTORY PROVISIONS INVOLVED

42 *U.S.C.* § 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This *pro se* civil rights action came before the District Court on the collective Rule 12(b)(6), *FRCP*, Motion to Dismiss of the Respondents, South Carolina Department of Corrections, Parker Evatt, and P. Douglas Taylor. The Petitioner's action against the SCDOC arose out of his incarceration at Lieber Correctional Institution ("Lieber") on January 11, 1989, pursuant to the Order of the Respondent, the Honorable William T. Howell ("Judge Howell"). The SCDOC's motion to dismiss was principally based on the Petitioner's failure to state a claim upon which relief could be granted.

In 1984, the Respondent, James Island Public Service District ("JIPSD"), instituted a suit against the Petitioner in the Charleston County Court of Common Pleas.[1]

The JIPSD sought and was granted an injunction requiring the Petitioner to connect to its municipal sewer system. The South Carolina Court of Appeals affirmed an Order granting the injunction on March 25, 1987.[2] Judgment was entered against the Petitioner on that date.

Subsequently, in 1988, the JIPSD filed a Rule to Show Cause Why an Order should not be issued finding the Petitioner in contempt of court for his failure to comply with the March 25, 1987, Order of Judgment. On October 26, 1988, Judge Howell found the Petitioner in contempt of Court for his voluntary failure to comply with the March 25, 1987, Order. Judge Howell sentenced the Petitioner to six (6) months in jail, but granted him a sixty (60) day grace period to hook up to the JIPSD's sewer system to avoid incarceration. The Petitioner filed a petition with the South Carolina Supreme Court for a Writ of Supersedeas to Stay Judge Howell's contempt sentence. The Supreme Court denied the Petition on December 16, 1988.

The Petitioner voluntarily chose not to comply with the contempt order by hooking up to the sewer system. On January 6, 1989, Judge Howell ordered the Petitioner

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[1] *See, James Island Public Service District v. Wilburt A. Seigel* (Civil Action No. 84-CP-10-3476, Charleston County Court of Common Pleas) ("*JIPSD v. Seigel*").

[2] *See, James Island Public Service District v. Wilburt A. Seigel* (S.C. Ct. App. Memo. Op. No. 87-MO-023, filed March 9, 1987).

to begin serving his contempt sentence on January 11, 1989. The Respondent, J. Alton Cannon, Sheriff of Charleston County, transported the Petitioner to Lieber and relinquished custody to the SCDOC. The Petitioner served only one (1) night at Lieber before he was released. He was in the SCDOC's custody for only that short time. Thereafter, on February 16, 1989, Judge Howell modified the sentence, substituting a monetary fine in lieu of incarceration.

On January 3, 1991, the Petitioner filed this action alleging, *inter alia*, violation of 42 *U.S.C.* § 1983. Among the Defendants named in this action were the SCDOC, Evatt, and Taylor. They, as well as, all other Respondents, filed Motions to Dismiss pursuant to Rule 12(b), *FRCP*. After the Petitioner responded to the Respondents' respective motions, the United States Magistrate Judge conducted a hearing on March 20, 1991. During that hearing the parties agreed that the Magistrate Judge would decide the Respondents' motions solely on the motion papers, exhibits, and legal memoranda without resort to oral arguments.

The Magistrate Judge issued his written Report and Recommendation on August 5, 1991, granting all of the Respondents' motions. The Petitioner timely filed objections to the Magistrate Judge's Report. *See* 28 *U.S.C.* § 636(b)(1)(C). The case was heard *de novo* by the United States District Court Judge who, by order dated January 10, 1992, adopted the Magistrate Judge's Report and Recommendation as the Order of the District Court.

The Petitioner timely appealed the District Court's Order to the United States Court of Appeals for the

Fourth Circuit. The Court of Appeals affirmed the District Court's Order in an unpublished *per curiam* opinion rendered on November 10, 1993. The Petitioner filed a Petition for Rehearing which the Fourth Circuit denied on December 16, 1993. The Petitioner now seeks a Writ of Certiorari to review the decisions below which dismissed his action against all of the Respondents, including the SCDOC, Evatt, and Taylor.

SUMMARY OF THE ARGUMENT

These Respondents are a state agency and its officials which are immune from liability under 42 *U.S.C.* § 1983. The lower courts properly found that the Petitioner's Complaint failed to allege that any custom or policy by the SCDOC which deprived the Petitioner of his constitutional rights. In addition, there was no allegation of any act or omission by Respondents Evatt or Taylor sufficient to state a 42 *U.S.C.* § 1983 claim. Finally, even if the Petitioner had articulated a request for declaratory or equitable relief, those issues were moot because Judge Howell had abated the order of incarceration and no case nor controversy existed for adjudication.

ARGUMENT

I. THE RESPONDENTS, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, PARKER EVATT, AND DOUGLAS P. TAYLOR, ARE STATE AGENCIES AND STATE OFFICIALS, RESPECTIVELY, AND, THEREFORE, CANNOT BE SUED PURSUANT TO 42 *U.S.C.* § 1983.

It is undisputed that the SCDOC is a State agency and Evatt and Taylor, its officers, are State officials. The SCDOC and its officials were specifically excluded from suit pursuant to 42 *U.S.C.* § 1983. The claims were barred on two separate and distinct grounds: (1) the Eleventh Amendment bars suits against state agencies or their officials; and (2) state agencies and state officials acting in their official capacities are not "persons" within the scope of 42 *U.S.C.* § 1983.

Section 1 of the Civil Rights Act of 1871, 42 *U.S.C.* § 1983, was passed pursuant to § 5 of the Fourteenth Amendment. It was originally part of a bill designed to curtail Ku Klux Klan violence in the South. *See, Monell v. Department of Social Services*, 436 U.S. 658 (1978). The statute provides a federal cause of action to plaintiffs who have been deprived of their constitutional right by "any person" under color of state law. *Id.*

The Eleventh Amendment bars suits against a state or its agencies, unless the state has waived its immunity, *Welch v. Texas Dept. of Highway & Public Transportation*, 483 U.S. 468 (1987) (plurality opinion), or unless Congress, pursuant to § 5 of the Fourteenth Amendment, has overridden that immunity. *See also, Pennhurst State School &*

Hospital v. Holderman, 465 U.S. 89 (1984); *Moremo v. University of Maryland*, 645 F.2d 217 (4th Cir. 1981), *affirmed*, 458 U.S. 1 (1982).

In 1979, this Court held that Congress, in passing 42 *U.S.C.* § 1983, had no intention of disturbing a state's Eleventh Amendment immunity. *Quern v. Jordan*, 440 U.S. 332 (1979). The Court reasoned that a claim which might impose a liability to be paid from public funds in a state's registry was barred by the Eleventh Amendment. Reviewing the legislative history behind the Civil Rights Act of 1871, the Court held that there was no logic warranting "the conclusion that Congress intended, by the general language of the Act, to overturn the constitutionally guaranteed immunity of the states." *Id.*, 440 U.S. 332, 341.

In 1989, this Court, in *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989), specifically ruled that neither a state nor its officials acting in their official capacities are "persons" under 42 *U.S.C.* § 1983. *Will*, 491 U.S. 58, 71. The *Will* Court also held that, while state officials literally are "persons" in a literal case, a suit against a state official in his or her official capacity is not a suit against the official but, rather, is a suit against the official's office. *Id.*, 491 U.S. 58, 71.[3] A lawsuit against a governmental

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[3] *See, Brandon v. Holt*, 469 U.S. 464, 471 (1985). Official capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Monell*, 436 U.S. 658, 690 n. 55; *Ford Motor Co. v. Department of Treasury*, 323 U.S. 459 (1945) ("When the action is, in essence, one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to

official, acting in his or her official capacity, is, in all respects other than name, to be treated as a suit against the entity. *Brandon*, 469 U.S. 464, 471-472.

It was undisputed that the SCDOC was created pursuant to *S.C. Code Ann.* § 24-1-30 (1989). That statute provides that the SCDOC is an administrative agency of the government of the State of South Carolina. *Id.* The statute further provides that the SCDOC's primary function is to implement and carry out the policy of the State with respect to its prison system. *Id. See also, S.C. Code Ann.* § 24-1-20 (1989). It is also undisputed that Respondents Evatt and Taylor, as the Commissioner[4] and Warden, respectively, were State officials. *See S.C. Code Ann.* §§ 24-1-100, 110 (1989). Therefore, while acting in their official capacities, they were in effect, alter egos of the State of South Carolina. The Petitioner's 42 *U.S.C.* § 1983 claims against the SCDOC were barred.[5] *Will*, 491 U.S. 58, 71.

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invoke its sovereign immunity from suit, even though individual officials are nominal defendants").

[4] In 1993 the South Carolina Legislature partially reorganized South Carolina state government. *See, S.C. Code Ann.* § 1-30-10 *et seq.* (Supp. 1993). The Office of the Commissioner of the SCDOC was abolished and the Office of the Director of the SCDOC was created. *S.C. Code Ann.* § 24-1-40 (Supp. 1993).

[5] *See generally, Gourdine v. Ellis*, 435 F. Supp. 882 (D.S.C. 1977). *Jacobs v. College of William & Mary*, 495 F. Supp. 183 (E.D. Va. 1980), *affirmed*, 662 F.2d 922 (4th Cir. 1981), *cert. denied*, 454 U.S. 1033 (1982) (the Court held in a sex discrimination action against a state university that it need not reach the question of whether the university, as a state agency, was a "person" within the meaning of 42 *U.S.C.* § 1983, but noted that it appeared that this Court's decision in *Quern* effectively closed application of 42 *U.S.C.* § 1983 to the states and their agencies). *Bailey v. Ohio*

II. THE PETITIONER'S COMPLAINT FAILED TO STATE ANY FACTS TO SUPPORT A CLAIM THAT THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ACTIVELY CAUSED ANY DEPRIVATION OF THE PETITIONER'S CONSTITUTIONAL RIGHTS.

The Petitioner's Complaint was devoid of any facts sufficient to state a claim against the SCDOC. In order to establish a governmental entity's liability under 42 *U.S.C.* § 1983, the Petitioner was required to establish that the entity at issue is a "moving force behind the deprivation." *Polk County v. Dodson*, 454 U.S. 312, 326 (1981) (quoting *Monell*, 436 U.S. 658, 694). Consequently, the entity's "policy or custom" must have played a part in the violation of federal law. *Oklahoma City v. Tuttle*, 471 U.S. 808, 817-818 (1985).

As this Court stated in *Monell*:

> [A] local government may not be sued under [42 *U.S.C.*] § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by it or by those whose edicts or

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State University, 487 F. Supp. 601 (S.D. Ohio 1980) (holding that a state university in Ohio was not a "person" subject to suit under 42 *U.S.C.* § 1983); *Moreno v. University of Maryland*, 420 F. Supp. 541 (D. Md. 1976), *affirmed without opinion*, 556 F.2d 573 (4th Cir. 1977); *Talliafero v. State Council of Higher Education*, 372 F. Supp. 1378 (E.D. Va. 1974); *Kompara v. Board of Regents*, 548 F. Supp. 537 (M.D. Tenn. 1982) (the Court reasoned that although Congress could have included states within the definition of "person" in § 1983, if it had so chosen, such an interpretation of the statute was nevertheless precluded by this Court's decision in *Quern*).

> acts may fairly be said to represent official policy, inflicts the injury that the government, as an entity, is responsible under [42 *U.S.C.*] § 1983.

Id., 436 U.S. 658, 694.

The Petitioner failed to allege improper policy or custom maintained by the SCDOC. The only allegations that concerned SCDOC, at all, were actually allegations about unnamed jail officials who transported the Petitioner from Lieber back to the Charleston County Jail and into the custody of the Charleston County Sheriff's Department. The lower courts properly dismissed the Petitioner's Complaint since it patently failed to state a claim against the SCDOC.

III. THE PETITIONER'S COMPLAINT FAILED TO STATE ANY FACTS TO SUPPORT A CLAIM THAT EITHER COMMISSIONER EVATT OR WARDEN TAYLOR ACTIVELY CAUSED A DEPRIVATION OF THE PETITIONER'S CONSTITUTIONAL RIGHTS.

The only facts in the Petitioner's Complaint alleged against Respondents Evatt and Taylor were found in Paragraph 5 which provided:

> Defendant [SCDOC] operates under [*S.C. Code Ann.*] § 24-3-10, etc. [(1989)], where it is stated that the Board of Corrections shall designate place of confinement. The [SCDOC] is under Commissioner Parker Evatt who is in charge of the Lieber Correctional Institute, which is under the supervision of Warden P. Douglas Taylor where [Petitioner] was wrongfully incarcerated in a maximum security cell on January 11, 1989.

Id. The Complaint was otherwise devoid of any allegations concerning either Respondent Evatt or Taylor. There were no allegations that either official caused the events leading to the Petitioner's alleged constitutional deprivation of rights. Personal action is required to hold a defendant liable under 42 *U.S.C.* § 1983. *Monroe v. Pape*, 365 U.S. 167 (1961).

Federal courts have repeatedly held, in essence, that:

> It is necessary to establish personal knowledge or involvement, the personal ordering of a subordinate to do acts, an actual knowledge of the acts of subordinates, and acquiescence therein if liability of a superior in a civil rights action is to be found.

Jane Doe v. Seurynck, 473 F. Supp. 860, 863 (D.S.C. 1978) (citing *Mitchell v. Hendricks*, 431 F. Supp. 1215 (E.D. Pa. 1977)). Moreover, the Fourth Circuit has held, in *Vinnedge v. Gibbs*, 550 F.2d 926 (4th Cir. 1977):

> Liability will only lie [under 42 *USC* § 1983] where it is affirmatively shown that the official charged acted personally in the deprivation of the Appellant's rights. The doctrine of *respondeat superior* has no application under this action.

Id. (citing *Bennett v. Gravelle*, 323 F. Supp. 203, 214 (D.Md.), *affirmed*, 451 F.2d 1011 (4th Cir. 1971)). *See also*, *Rizzo v. Goode*, 423 U.S. 362 (1976); accord, *Jennings v. Davis*, 476 F.2d 127 (8th Cir. 1973); *Adams v. Pate*, 445 F.2d 105 (7th Cir. 1971).

The Petitioner's Complaint contained no allegations that either Respondent Evatt or Taylor had personal involvement in the alleged deprivation of his rights.

Moreover, there was no basis in the Complaint for such an inference. The Petitioner failed to state a claim upon which relief can be granted pursuant to 42 *U.S.C.* § 1983 and the lower courts properly dismissed his action.

IV. IF THE PETITIONER INTENDED TO STATE A CLAIM FOR DECLARATORY OR INJUNCTIVE RELIEF, SUCH CLAIM WAS BARRED BECAUSE NO CASE OR CONTROVERSY EXISTED SINCE JUDGE HOWELL HAD PREVIOUSLY ABATED THE ORDER OF INCARCERATION.

Eleventh Amendment immunity does not necessarily extend to a 42 *U.S.C.* § 1983 action for declaratory/injunctive relief. *Papasan v. Allain*, 478 U.S. 265 (1986); *Ex Parte Young*, 209 U.S. 123 (1908). Given the liberality with which the Petitioner's *pro se* Complaint must be reviewed by the lower courts on a motion to dismiss, the Complaint could have arguably been broadly interpreted to request declaratory/injunctive relief.

Even if the Petitioner's Complaint could be interpreted to have sought declaratory/injunctive relief the Petitioner, nonetheless, lacked standing to present the request, and the lower courts lacked jurisdiction to hear the Petitioner's claim. Standing is a jurisdictional issue, as opposed to a procedural one. The judicial power of the federal courts is constitutionally limited to the adjudication of "cases" or "controversies." *U.S. Const.* art. III, § 2. The existence of a case or controversy

> 'depends upon whether the person seeking relief has alleged a sufficient personal stake in the outcome to assure that the Court will be

> called upon to resolve real issues between genuine adversaries rather than merely to give advisory opinions with respect to abstract or theoretical questions.'

Fowler v. Alexander, 478 F.2d 694, 696 (4th Cir. 1973) (quoting *Abele v. Markle*, 452 F.2d 1121, 1124 (2nd Cir. 1971)).

As the Petitioner's Complaint plainly indicated, the Petitioner was no longer in jail nor was the Order of Incarceration still in effect at the time he filed this action. The Petitioner was not entitled to declaratory or injunctive relief. He was unable to show that he was in real, immediate danger of sustaining some direct injury as a result of the challenged official conduct. Abstract injury is not enough. The injury, or threat of injury, must be "real and immediate", not "conjectural or hypothetical." *City of Los Angeles v. Lyons*, 461 U.S. 95 (1984); *Rizzo*, 423 U.S. 362 561; *Golden v. Zwickler*, 394 U.S. 103 (1969); *In Re Justices of Supreme Court of Puerto Rico*, 695 F.2d 17 (1st Cir. 1982).

It was unclear why or how a specific procedure, or the lack of a procedure, to specify the location of incarceration could have been harmful to the Petitioner. Since the allegedly offending order had been abated, the Petitioner did not face any real or immediate threat of incarceration. The Petitioner was, likewise, under no present threat of transportation to a place of incarceration. The likelihood that he would be incarcerated in the future was remote and speculative in the extreme. Even if litigation was to be initiated again between the Petitioner and the JIPSD, there was no reason to assume that the Petitioner would be found in contempt of court. There was also no reason to assume that if he was found in contempt of court, there

would be the sentence of incarceration as opposed to a monetary fine.

Furthermore, it is a well established rule that unless exceptional circumstances exist, internal matters in state penitentiaries are the sole concern of the states, and federal courts should not inquire concerning them. *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987); *Childs v. Pegelon*, 321 F.2d 487 (4th Cir. 1963); *Haskins v. United States*, 292 F.2d 265 (4th Cir. 1961); *Henson v. Welch*, 199 F.2d 367 (4th Cir. 1952). The Petitioner did not present any exceptional circumstances which would be sufficient to justify judicial intervention in this case.

CONCLUSION

The Respondents, South Carolina Department of Corrections, Commissioner Evatt, and Warden Taylor, as a state agency and state officials, respectively, were immune from liability under 42 *U.S.C.* § 1983. Furthermore, the lower courts properly found that the Petitioner's Complaint failed to allege that any custom or policy by the SCDOC which deprived the Petitioner of his constitutional rights. In addition, the Petitioner did not allege any act or omission by Respondents Evatt or Taylor sufficient to state a 42 *U.S.C.* § 1983 claim. Finally, even if the Petitioner had articulated a request for declaratory or equitable relief, those issues were moot because Judge Howell had abated the order of incarceration and no case nor controversy existed for adjudication. The lower courts properly dismissed the Petitioner's Complaint. Consequently, these Respondents respectfully request

that the Court deny the Petition for Writ of Certiorari filed by the Petitioner.

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